Congress of the United States

Washington, DC 20515

February 24, 2003

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

This month in Nairobi, 130 nations participated in a meeting of the United Nations Environment Programme (UNEP). This meeting culminated in UNEP's issuance of a decision that addresses the global problem of mercury contamination. UNEP formally recognized "the significant global adverse impacts" from mercury pollution and the need for "further international action to reduce the risks to human health and the environment."[1] UNEP authorized short-term steps, such as developing better inventories of mercury use and emissions, and established a process that could lead to development of an international agreement to reduce mercury emissions.

While these actions are a step forward, a stronger agreement was undermined by U.S. negotiators. We have obtained a confidential U.S. negotiating document for the talks that reveals that your administration's strategy was to oppose efforts by the European Union and other nations to develop a binding international agreement on mercury.[2] In fact, your administration opposed even voluntary goals for mercury reductions.

Experience with global environmental problems shows that individual countries cannot solve them independently. International commitments and action are necessary. Yet instead of a binding, or even voluntary, international commitment to reduce mercury emissions, the U.S. delegation was directed to support only short-term measures such as information development and dissemination. While additional country-specific information is needed, by itself more information will do nothing to reduce mercury emissions or contamination levels worldwide.

We are deeply disappointed with your position on global mercury contamination. The United States has failed to take a leadership role on this critical global environmental problem. The positions taken by the United States are contrary to science, the consensus of many other nations, and the interests of the American people. They also further exacerbate tensions with some of our closest allies over the Administration's perceived unilateralism, at a time when we are seeking broad and active international support for U.S. objectives.

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[1]UNEP, *Draft Decisions as Approved by the Contact Group on Chemicals* (Feb. 6, 2003) (UNEP/GC.22/L.7).

[2]*U.N. Conference Backs Efforts to Curb Mercury Pollution*, New York Times (Feb. 10, 2003).

Background

Mercury is a highly toxic substance. It is a potent neurotoxin, and it is particularly damaging to the development of the fetus.[3] Effects from prenatal exposure can include mental retardation, cerebral palsy, deafness, and blindness.[4] Even low-dose prenatal exposure can cause persistent adverse effects on children's development, such as delayed walking and talking and impaired learning abilities.[5] Adult exposure can produce sensory and motor impairment, such as slurred speech, blurred vision, tremors, and memory loss.[6] In addition, several studies suggest that even small mercury exposures may cause adverse cardiovascular effects.[7] The adverse effects of mercury exposure on birds and mammals include death, reduced reproductive success, impaired growth and development, behavioral abnormalities, liver damage, kidney damage, and neurobehavioral effects.[8]

Mercury pollution is a serious global problem. Environmental mercury levels have increased substantially due to human activities.[9] As stated in UNEP's Global Mercury Assessment:

Once released, mercury persists in the environment where it circulates between air, water, sediments, soil and biota in various forms. Current emissions add to the global pool — mercury that is continuously mobilised, deposited on land and water, and remobilised.[10]

No part of the earth is free from mercury contamination. Even in remote areas with no significant emissions such as the Arctic and Antarctic, highly elevated mercury concentrations

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[3]National Research Council, *Toxicological Effects of Methylmercury*, 4 (2000); EPA, *Mercury Study Report to Congress,* 2-5, 2-6 (December 1997); UNEP, *Global Mercury Assessment*, 38–39 (December 2002).

[4]National Research Council, *id.*

[5]*Id.*; EPA, *Mercury: General Information* (July 1, 2002) (available online at http://www.epa.gov/mercury/information.htm#questions).

[6]National Research Council, *supra* note 3; UNEP, *supra* note 3, at 41.

[7]UNEP, *supra* note 3, at 35.

[8]EPA, *supra* note 3, at 2-6.

[9]EPA, *supra* note 3, at 3-3.

[10]UNEP, *supra* note 3, at iii.

have been found in mammals and fish.[11] The global transport of mercury emissions makes it necessary to address this problem both domestically and internationally.

The United States is a significant contributor to global mercury emissions, producing over 100 metric tons of anthropogenic emissions each year.[12] The largest single source of mercury emissions in the United States and worldwide is the electric utility industry.[13] Almost all of the mercury emissions from electricity generation come from coal-fired power plants.[14]

International Efforts to Reduce Mercury Pollution

A major breakthrough in international efforts to control mercury pollution occurred in February 2001 when the Governing Council of UNEP requested a global assessment on mercury.[15] The assessment was to include an outline of options for the Governing Council to consider at the 2003 session to address any significant global adverse impact of mercury.[16]

The UNEP Global Mercury Assessment Working Group finalized the Global Mercury Assessment in September 2002. The working group concluded that there is "sufficient evidence of significant global adverse impacts to warrant international action to reduce the risks to human health and/or the environment arising from the release of mercury into the environment."[17] The Global Mercury Assessment also identified a number of specific options for action. These include: "reducing or eliminating the production, consumption and releases of mercury, substituting other products and processes, launching negotiations for a legally-binding treaty,

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[11]UNEP, *supra* note 3, at vi; Environment News Service, *Mercury Contaminates Polar Regions* (Mar. 21, 2002) (available online at: http://sdnp.delhi.nic.in/resources/climatechange/news/ens-22-03-02-polar.html).

[12]*See* EPA, *supra* note 3, at 3-5, 3-6 (U.S. emissions from municipal waste combustion, medical waste incineration, and hazardous waste combustion were adjusted to account for reductions required since 1995). In percent terms, the United States is responsible for an estimated 5% to 7% of global anthropogenic mercury emissions. *See* UNEP, *supra* note 3, at 10; EPA, *supra* note 3, at 3-5, 3-6.

[13]UNEP, *supra* note 3, at 10; EPA, *supra* note 3, at 3-5, 3-6.

[14]EPA, *supra* note 3, at 3-6.

[15]UNEP, Decision 21/5 (February 2001).

[16]*Id.*

[17]UNEP, *supra* note 3, at 22.

establishing a non-binding global program of action, and strengthening cooperation amongst governments on information-sharing, risk communication, assessment and related activities."[18]

At the meeting in Nairobi, the UNEP Governing Council accepted the Global Mercury Assessment and considered the identified options for action. Many nations had hoped to use this opportunity to work toward an international agreement to reduce mercury emissions.

For example, at the Global Mercury Assessment Working Group meeting in September 2002, the Latin American and Caribbean Group countries made a declaration that "a new binding instrument for mercury and its compounds should be created with the option of further extending such an instrument to other toxic metals and substances."[19]

The European Union took the step of submitting a draft proposal for the Governing Council decision on mercury, which contained a strongly worded call for international agreement and action.[20] The European Union proposed that UNEP agree to "actively pursue further measures for addressing significant adverse impacts" from mercury releases, including "a legally binding instrument or other appropriate instruments."[21]

Bush Administration Position in Nairobi

Unfortunately, instead of being an international leader on the environmental problem of mercury pollution, the U.S. negotiating objective was to block any effective international agreement to reduce mercury pollution. The confidential State Department document we have obtained details the Administration's intent to oppose E.U. and other proposals that might have led to mandatory reductions in mercury emissions.

With respect to a legally binding convention, the U.S. negotiating document states:

> We believe that negotiating a binding convention on mercury is not the most effective way to approach this issue at this time, and we should block any attempts to move forward on one at this meeting.

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[18] *Id.*

[19] UNEP, Global Mercury Assessment Working Group, *Report of the Global Mercury Assessment Working Group on the Work of its First Meeting*, 9 (Sept. 23, 2002).

[20] Hellenic Presidency of the European Union, *Suggested Action by the Governing Council on the Global Mercury Assessment* (Nov. 12, 2002).

[21] *Id.*

Incredibly, the Administration even opposed setting purely voluntary targets for mercury control. With respect to a voluntary program of action, the document states that the U.S. government "does not believe it is a useful utilization of resources to initiate a process to negotiate extensive policy options to be applied on a voluntary basis." Furthermore, the Administration opposed the inclusion of any "targets or timetables for actions in the [UNEP] decision (e.g., 50% reduction of mercury emissions by 2020)." A parenthetical indicates that EPA urged the Administration to support at least "an aspirational target and timeframe," but it appears that EPA was overruled by other agencies or the White House.

Instead, the Administration supported only technical assistance and capacity-building activities in developing countries. While such activities are clearly important, they are woefully insufficient to address the global problem of rising mercury emissions. A technical assistance activity such as issuing fish advisories may help prevent some exposures, but it will be of limited value in many communities where few alternative food sources are available.

Moreover, the Administration's approach does nothing to reduce mercury emissions in developed countries, which constitute an important portion of the total anthropogenic emissions worldwide.[22]

UNEP Decision on Mercury

The UNEP Governing Council decision on mercury recognizes the seriousness of the problem and the need for international action. It also directs UNEP to move forward with technical assistance and capacity-building activities. With respect to an international agreement on mercury, the decision invites submissions from governments on their views on further measures, "including, for example, on the possibility of developing a legally-binding instrument." These views are to be synthesized and considered at the next UNEP Governing Council session in 2005.

Overall, however, the U.S. delegation succeeded in minimizing and generally avoiding language designed to press countries to take specific actions or meet specific emissions reduction goals. The only mention of "goals" is a statement urging individual countries "to adopt goals and take national actions as appropriate." Apparently, even the language allowing for the possibility of developing a legally binding instrument was only reluctantly accepted by your Administration. According to a report from a nongovernmental participant, the U.S. delegation dropped its

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[22] *See* UNEP, *supra* note 3, at 10 (providing estimated global atmospheric releases of mercury from anthropogenic sources by continent).

opposition to this language only at the very end of the negotiations and only when the E.U. delegation indicated that the U.S. position on this language would be the deal-breaker.[23]

Conclusion

The Administration's action once again puts the United States at odds with some of our closest allies over our refusal to take effective action on an important international environmental issue. Your Administration has developed a track record of opposing, undermining, and ignoring international health and environmental treaties and treaty negotiations. We are concerned that these actions are weakening the credibility of the United States on environmental matters, as well as spurring resentment in the international community over U.S. unilateralism. And, of course, these actions harm the environment.

Previous examples of U.S. opposition to important health and environmental treaties and negotiations include:

- Kyoto Protocol: In March 2001, your Administration repudiated the first international binding agreement to reduce emissions of greenhouse gases, which had been signed by President Clinton. The Kyoto Protocol has been ratified by 104 countries to date.

- Framework Convention on Tobacco Control: In May 2001, your Administration reversed U.S. support for strong tobacco control provisions in this landmark health treaty. Instead, the U.S. delegation advocated ten out of eleven positions requested by the tobacco industry.[24]

- Biological Weapons Convention: In November 2001, your Administration unilaterally pulled out of negotiations on a protocol to establish verification procedures to ensure that signatories to the Biological Weapons Convention are not producing biological weapons.

- U.N. World Summit on Sustainable Development: In September 2002, during negotiations in Johannesburg, your Administration was widely criticized for opposing

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[23]Conversation with Michael Bender, Mercury Policy Project (Feb. 7, 2003).

[24]Letter from Rep. Henry A. Waxman to the President (Nov. 19, 2001); Henry A. Waxman, *The Future of Global Tobacco Treaty Negotiations*, New England Journal of Medicine, 936–939 (Mar. 21, 2002).

agreement on specific targets and timetables for renewable energy production and other environmental improvements.[25]

And just this month, the Administration acted to undermine the landmark Montreal Protocol on Substances That Deplete the Ozone Layer. The Montreal Protocol is generally considered the single most successful international environmental treaty. Among other things, it requires a steady phase-out of methyl bromide, a highly toxic pesticide that depletes the ozone layer. On February 7, 2003, however, your Administration requested exemptions that would allow methyl bromide production to *increase* even beyond current levels, contrary to the Protocol's requirements.[26]

Under previous Administrations, the United States had a well-deserved reputation as a world leader on the environment. The series of decisions you are making diminishes that reputation. Even more importantly, it threatens incalculable harm to the environment and the health of our children.

We strongly urge you to reconsider your opposition to an international agreement on mercury.

Sincerely,

Henry A. Waxman
Member
U.S. House of Representatives

Patrick J. Leahy
Senator
U.S. Senate

Thomas H. Allen
Member
U.S. House of Representatives

Janice D. Schakowsky
Member
U.S. House of Representatives

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[25]*See, e.g., Energy for Tomorrow: Johannesburg Plans Are Too Vague,* Dallas Morning News (Sept. 4, 2002); *U.S. Loses Influence in Snubbing World Summit,* Norfolk Virginian-Pilot (Sept. 4, 2002); *A Diplomatic Chess Game That Could Not End in Stalemate,* Guardian (Sept. 4, 2002); *Protesters Interrupt Powell Speech as U.N. Talks End,* New York Times (Sept. 5, 2002).

[26]EPA, *U.S. Critical Use Exemption Nomination for Methyl Bromide* (undated briefing paper provided to congressional staff on Feb. 7, 2003); *U.S. Seeks 54 Exemptions on Pesticide Ban,* New York Times (Feb. 7, 2003); Montreal Protocol on Substances That Deplete the Ozone Layer, Article 2H (Sept. 16, 1987).